



THE SIMPSON COATINGS GROUP, INC.

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2-11-2010

Craig Whitenack, Civil Investigator
United States Environmental Protection Agency
Region IX, Southern California Field Office
600 Wilshire Avenue, Suite 1420
Los Angeles, California 90017

Re: Yosemite Creek Superfund Site, San Francisco, CA
Response to 104(e) Information Request

This letter responds to the October 15, 2009 request for information ("RFI") of the United States Environmental Protection Agency ("EPA") to Tim Simpson, President of Simpson Coatings Group, Inc. ("Simpson") with regard to the Yosemite Creek Superfund site (the "Site"). Subject to both the general and specific objections noted below, and without waiving these or other available objections or privileges, Simpson submits the following response to the RFI and in accordance with the extended February 15, 2010 due date the EPA has established for this response.

In response to the RFI, Simpson has undertaken a diligent and good faith search for, and reviews of, documents and information in its possession, custody or control and that are relevant to this matter. However, the RFI purports to seek a great deal of information that is not relevant to the Site or alleged contamination at the Site. For example, while we understand the basis of the purported connection between Simpson and the former Bay Area Drum State Superfund Site at 1212 Thomas Avenue in San Francisco, California (the "BAD Site"), certain RFI questions seek information regarding facilities other than the BAD Site, including all facilities in California and all facilities outside of California that shipped drums or other containers to any location in the entire state of California. These other facilities throughout California and the United States have no nexus to the Site. Because such questions are not relevant to the Site, they are beyond the scope of EPA's authority as set forth in Section 104(e)(2)(A) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (EPA may request information "relevant to...[t]he identification, nature, and quantity of materials which have been ...transported to a ...facility").

The RFI also defined "COCs" as "any of the contaminants of concern at the Site and includes: lead, zinc, mercury, dichlorodiphenyltrichloroethane ("DDT"), chlordane, dieldrin, and polychlorinated biphenyls (PCBs)." However, certain RFI requests also seek information regarding hazardous substances more broadly. These requests go beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and are not relevant to the Site pursuant

to Section 104(e)(2)(A) of CERCLA; thus Simpson has limited its review of documents and information to the COCs identified by EPA.

As you may know, the California Department of Toxic Substances ("DTSC") conducted an extensive investigation of the BAD Site and Simpson's operations in connection with it. DTSC's investigation included an information request to Simpson Coatings Group and the DTSC files include Simpson's Response to the DTSC's information request, among other documents. We understand that EPA is already in possession of DTSC's files regarding the BAD Site, and to the extent that EPA is not in possession of these files, they are readily available to EPA. Thus, the focus of Simpson's identification, review and retrieval of documents has been upon data that has not been previously provided to EPA, DTSC or any other governmental agency that is relevant to the Site.

GENERAL OBJECTIONS

Simpson asserts the following general privileges, protections and objections with respect to the RFI and each information request therein.

1. Simpson asserts all privileges and protections it has in regard to the documents and other information sought by EPA, including attorney-client privilege, the attorney work product doctrine, all privileges and protections related to materials generated in anticipation of litigation, the settlement communication protection, the confidential business information ("CBI") and trade secret protections, and any other privilege and protection available to it under law. In the event that a privileged or protected document has been inadvertently included among the documents produced in response to the RFI, Simpson asks that such document be returned to Simpson immediately and here states for the record that it is not thereby waiving any available privilege or protection as to any such document.
2. In the event that a document containing CBI or trade secrets has been inadvertently included among the numerous documents provided in response to the RFI, Simpson asks that any such documents be returned to Simpson immediately so that Simpson may resubmit the document in accordance with the applicable requirements for the submission of Confidential Information.
3. Simpson objects to any requirement to produce documents or information already in the possession of a government agency, including but not limited to DTSC, or already in the public domain. As noted above, DTSC conducted an extensive investigation of the BAD Site and Simpson's operations in connection with it. DTSC's investigation included an information request to Simpson Coatings and the DTSC files included Simpson's Response to DTSC's information request. EPA is already in possession of DTSC's files regarding the BAD Site, and to the extent that EPA is not in possession of these files, they are readily available to EPA. Notwithstanding this objection, and without waiving it, Simpson may produce certain information or documents in its

possession, custody, or control that it previously provided to or obtained from governmental agencies that contain information responsive to the RFI.

4. Simpson objects to Instruction 4 to the extent it seeks to require Simpson, if information responsive to the RFI is not in its possession, custody, or control, to identify any and all persons from whom such information "may be obtained." Simpson is aware of no obligation that it has under Section 104(e) of CERCLA to identify all other persons who may have information responsive to EPA information requests and is not otherwise in a position to identify all such persons who may have such information.

5. Simpson objects to Instruction 5 on the ground that EPA has no authority to impose a continuing obligation on Simpson to supplement these responses. Simpson will, of course, comply with any lawful future requests that are within EPA's authority.

6. Simpson objects to Instruction 6 in that it purports to require Simpson to seek and collect information and documents in the possession, custody, or control of individuals not within the custody or control of Simpson. EPA lacks the authority to require Simpson to seek information not in its possession, custody, or control.

7. Simpson objects to the RFI's definition of "document" or "documents" in Definition 3 to the extent it extends to documents not in Simpson's possession, custody, or control. Simpson disclaims any responsibility to search for, locate, and provide EPA copies of any documents "known by Simpson to exist" but not in Simpson's possession, custody, or control.

8. Simpson objects to the RFI's definition of "Facility" or "Facilities" in Definition 4 because the terms are overbroad to the extent that they extend to facilities with no connection to either the Site or the BAD Site. Moreover, the term "Facilities" as defined in the RFI is confusing and unintelligible as the term is defined as having separate meanings in Definition 4 and Request No. 3.

9. Simpson objects to the definition of "identity" in Definition 7 to the extent that the definition encompasses home addresses of natural persons. Subject to this objection, current Simpson employees and any other natural persons are identified by name and corporate address. Simpson requests that any contacts with Simpson employees identified in these responses or the related documents be initiated through Tim Simpson.

10. Simpson objects to the definition of "you," "Respondent," and "Simpson" in Definition 14 because the terms are overbroad and it is not possible for Simpson to answer questions on behalf of all persons and entities identified therein. Notwithstanding this objection, and without waiving it, Simpson has undertaken a diligent and good faith effort to locate and furnish documents and information in its possession, custody, and control that are responsive to the RFI.

11. Simpson objects to EPA's request that Simpson provide EPA separately information that is contained in documents being furnished by Simpson in response to the

RFI. Where documents have been provided in connection with a response, information sought by EPA in the corresponding request for information that is set forth in those documents is not furnished separately. To do otherwise would be unduly burdensome

RESPONSES TO OCTOBER 15, 2009 EPA INFORMATION REQUESTS

1. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Identifying each of the products manufactured by Simpson is not feasible do to the vast number of products manufactured over the 54 years of production.
2. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site. However, in addition to facilities with a connection to the BAD Site, Request No. 2 purports to also seek information regarding *any* facility located in California (excluding locations where ONLY clerical/office work was preformed) and *any* facility located outside of California that shipped drums or other containers to *any* location in California, even to locations other than the BAD Site. These other facilities have no nexus with the BAD Site, and thus this request seeks information that is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, Simpson has been advised that a Jack Hamilton, who apparently was associated with the Bay Area Drum Company, stated in an interview in the early 1990's with the DTSC and the Bay Area Drum *Ad Hoc* PRP Group that Simpson sent a total of approximately 8,323 drums to the Site between 1958 and 1970. Simpson's primary operation was located at 241 East Harris Street, South San Francisco, California and relocated to 111 South Maple Street, South San Francisco, California in 1969. Simpson has no other information indicating that it sent any waste to the Site, nor does Simpson concede that Mr. Hamilton's alleged statement is correct.

3. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. In particular, but without limiting the generality of the foregoing objection, Simpson objects to the request in (b.) that it describes "types of work preformed at each location over time" Without an identification by EPA of the types of work it is referring to, it would be virtually impossible, given the broad nature of possible work at various facilities, to describe each and every type of work that was preformed at any facility. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without waiver of its objections, Simpson is providing EPA with certain information and documents that contain information related to Simpson's Facilities that shipped drums or other containers to the BAD Site.

4. In addition to the General Objection set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome to the extent that it seeks to require Simpson to describe "types of records." Where documents have been provided in response to this RFI, each and every document regarding SOIs is not also "identified" by describing its contents. Simpson further objects to Request No. 4 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus Simpson has limited its review of documents and information to the COCs identified by EPA.

Notwithstanding the foregoing, and without any waiver of its objections, Simpson is providing EPA with certain information and documents that contain information related to Simpson's Facilities that shipped drums or other containers to the BAD Site.

5. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. By removing any temporal limit and any nexus between COCs at Simpson's Facilities and the BAD Site, Request No. 5 purports to seek information relating to Simpson's Facilities that is not relevant to contamination at the Site.

6. Lead and Zinc were used and stored at our facilities.

7. Lead containing pigments have been purchased, stored and used at our facilities from 1956 until 2005. Zinc containing pigments have been purchased, stored and used at our facilities from 1956 and currently are used.

8. The average annual amount of Lead containing pigments purchased, stored, and used at our facilities is approximately 4000 pounds. The average annual amount of Zinc containing pigments purchased, stored, and used at our facilities is approximately 3000 pounds.

9. The average volume of Lead containing pigments disposed annually by our facilities is 15 pounds. The method of disposal is as a component of liquid wastes sent to Romic Environmental in East Palo Alto, California. The waste was used as a cement kiln incineration fuel blend. The average volume of Zinc containing pigments disposed annually by our facilities is 15 pounds. The method of disposal is as a component of liquid waste sent to Romic Environmental in East Palo Alto, California. The waste was used as a cement kiln incineration fuel blend.

10. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. By removing any temporal limit and any nexus between hydraulic fuel or transformer oil at Simpson's Facilities and the BAD Site, Request No. 10 purports to seek information relating to Simpson's Facilities that is not relevant to contamination at the Site.

Simpson has used and stored hydraulic oil at its facilities throughout the years.

11. Simpson uses AW-68 from Kendall as its all-purpose hydraulic oil.
12. We have continually used hydraulic oil.
13. We purchased and store one 55 gallon drum of hydraulic oil every 3 or 4 years. We keep the one drum on hand and use approximately 10 to 15 gallon per year.
14. We collect the used hydraulic oil back into a drum and return it to our vendor for recycling at the time we purchase a new drum.
15. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Request No. 15 purports to seek information relating to Simpson's Facilities that is not relevant at the Site.
16. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Request No. 16 purports to seek information relating to Simpson's Facilities that is not relevant at the Site.
17. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Simpson further objects to Request No. 17 as it assumes that each SHC is somehow individually identified, tracked, and used and reused by the same entity throughout the life of the SHC. There is no evidence that BAD operated in this way or that it tracked SHCs for its customers such that this information is available. Generally, SHCs, such as drums sent to drum reconditioners by a customer, are fungible commodities and are not individually tagged or tracked to ensure their return to that particular customer. Accordingly, Request No. 17 purports to seek information that does not exist.

Simpson further objects to Request No. 17 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which the EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus Simpson has limited its review of documents and information to the COCs identified by EPA.

Additionally, as stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 17 purports to seek information regarding SHCs that were sent to sites other than the BAD Site. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without waiver of its objections, Simpson is providing EPA with certain information and documents that contain information related to Simpson's Facilities that shipped drums or other containers to the BAD Site.

18. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 18 purports to seek information regarding SHCs that were sent to sites other than the BAD Site. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, Simpson is providing EPA with certain information and documents that contain information related to Simpson's Facilities that shipped drums or other containers to the BAD Site.

19. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Simpson further objects to Request No. 19 as it assumes that each SHC is somehow individually identified, tracked, and used and reused by the same entity throughout the life of the SHC. There is no such evidence that BAD operated in this way or that it tracked SHCs for its customers such that this information is available. Generally, SHCs, such as drums sent to drum reconditioners by a customer, are fungible commodities and are not individually tagged or tracked to ensure their return to that particular customer. Accordingly, Request No. 19 purports to seek information that does not exist. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 18 purports to seek information regarding SHCs that were sent to sites other than the BAD Site.

20. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Request No. 20 purports to seek information relating to Simpson's Facilities that is not relevant to contamination at the Site. Simpson further objects to Request No. 20 as it purports to seek information regarding procurement of "Materials" at facilities other than the BAD Site and thus goes beyond the specific chemicals for which the EPA purports to have evidence of a release or threatened release to the environment.

21. In addition to the General Objections as set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 21 purports to seek information regarding collection and storage of "any SOLs" at facilities other than the BAD Site. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

22. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Simpson further objects to Request No. 22 as it assumes that each SHC is somehow individually identified, tracked, and used and reused by the same entity throughout the life of the SHC. There is no evidence that BAD operated in this way or that it tracked SHCs for its customers such that this information is available. Generally, SHCs, such as drums sent to drum reconditioners by a customer, are fungible commodities and are not individually tagged or tracked to ensure their return to that particular customer. Accordingly, Request No. 22 purports to seek information that does not exist.

As stated in the RFI, "EPA is seeking to identify parties that have contributed to contamination at the Site." Moreover, the RFI defined "COCs" as "any of the contaminants of concern at the Site and includes: lead, zinc, mercury, DDT, chlordane, dieldrin, and PCBs. Simpson further objects to Request No. 22 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, Simpson has limited its review of documents and information to the COCs identified by EPA. Additionally, Simpson objects to Request No. 22 as it purports to seek information regarding containers used to remove each type of waste containing any SOIs from the Facilities and taken to *any* other place during *any* time. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site.

Notwithstanding the foregoing, and without any waiver of its objections, Simpson is providing EPA with certain information and documents that contain information related to Simpson's Facilities that shipped drums or other containers to the BAD Site.

23. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." Moreover, the RFI defined "COCs" as "any of the contaminants of concern at the Site and includes: lead, zinc, mercury, DDT, chlordane, dieldrin, and PCBs. Simpson further objects to Request No. 23 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, Simpson has limited its review of documents and information to the COCs identified by EPA. Additionally, Simpson objects to Request No. 23 as it purports to seek information regarding waste generated at any Facilities that contained SOIs and taken to *any* other place during *any* time. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this is not relevant to the Site.

24. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Identifying all individuals who currently have, and those who have

had, responsibility for Simpson's environmental matters at all of Simpson's Facilities, including those that have no nexus to the BAD Site, is not feasible due to a long history of existence and operations.

25. In addition to the General Objections as set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Identifying all drum recyclers or drum reconditioners from which Simpson has ever acquired such drums or containers is not feasible due to a long history of existence and operations.

26. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. Simpson further objects to Request No. 26 as it purports to seek information relating to hazardous substances beyond specific chemicals for which EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, Simpson has limited its review of document and information to the COCs identified by EPA.

27. In addition to the General Objections as set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. As stated in the RFI, "EPA is seeking to identify parties that have or may have contributed to contamination at the Site." However, Request No. 27 purports to seek information regarding a broad range of removal and remedial actions, corrective actions and cleanups. Moreover, identifying all such removal and remedial actions is not feasible due to a long history of existence and operations. To the extent that EPA seeks information about facilities that have no nexus with the BAD Site, this request is not relevant to the Site. Simpson further objects to Request No. 27 to the extent that EPA is already in possession of the requested documents, and to the extent that EPA is not in possession of these files, they are readily available to EPA.

28. In addition to the General Objections set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. DTSC conducted an extensive investigation of the BAD Site and Simpson's operations in connection with it. DTSC's files include extensive records concerning the Bay Area Drum Company, Inc. and other persons and entities that owned the facility at 1212 Thomas Avenue, in the City and County of San Francisco, California. Simpson understands that EPA is already in possession of DTSC's files regarding the BAD Site, and to the extent that EPA is not in possession of these files, they are readily available to EPA.

29. In addition to the General Objections as set forth above, Simpson objects to this request as overbroad in scope, unauthorized by law to the extent it is overbroad, and unduly burdensome. In responding to the RFI, Simpson has undertaken a diligent and good faith search for, and review of, documents and information in its possession, custody or control and that are relevant to this matter. Moreover, Simpson understands that EPA is already in possession of DTSC's files regarding the BAD Site. Simpson is

under no further obligation to identify time periods to which these documents do not pertain.

30. Simpson objects to Request No. 30 as it purports to seek information relating to hazardous substances beyond the specific chemicals for which the EPA purports to have evidence of a release or threatened release to the environment at the Site and that is not relevant to the Site; thus, Simpson has limited its review of documents and information to the COCs identified by EPA. Simpson further objects to Request No. 30 as it purports to seek copies of documents containing information responsive to the previous twenty-nine questions. DTSC conducted an extensive investigation of the BAD Site and Simpson's operations in connection with it. DTSC's investigation included an information request, among other documents. We understand that EPA is already in possession of DTSC's files regarding the BAD Site, and to the extent EPA is not in possession of these files, they are readily available to EPA.

Any questions EPA may have regarding the responses to this information request may be directed to Tim Simpson at Simpson Coatings Group, Inc, 111 South Maple Avenue, South San Francisco, California, 94080.

A handwritten signature in black ink, appearing to be 'T. Simpson', written in a cursive style.

Tim Simpson
President
Simpson Coatings Group, Inc.